IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 567 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MODERN CONSTRUCTION CO.LTD.

Versus

STATE OF GUJARAT

Appearance:

MR SB VAKIL, Senior Counsel, with Ms.Archana R. Acharya, for the Petitioner.

Mr.U.R. Bhatt, Assistant GOVERNMENT PLEADER, for Respondent No. 1-1/2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/05/2004

ORAL JUDGEMENT

1. The petitioner instituted a civil suit, being Special Civil Suit No.110 of 1975. The suit was decreed by the trial court. Ultimately, the judgment debtor

deposited the amount of Rs.5,74,502.20 Ps., which included interest upto the date of deposit, i.e. 4.1.1979, along with the proportionate costs of the suit. At the time of depositing the amount, on behalf of the judgment debtor, an application was submitted before the trial court, praying that the decretal amount may not be ordered to be paid to the decree holder and further praying that the said amount be kept as deposit, as, the judgment debtor is desirous of preferring an appeal before the High Court challenging the decree of the trial court.

Pursuant to the aforesaid deposit, an application was submitted by the petitioner-plaintiff before the Civil Judge (Senior Division), Surat, wherein the said court passed the following order on 31.1.1979 :-

" ... ...

Shri Joshi is not present when called out.
Decree is a money decree. I see no reason for not giving the amount to the plaintiff. The application is allowed. However, it is ordered that the amount is to be paid to the plaintiff on his furnishing personal Bond and one solvent security of Rs.5,75,000/- or a Bank Guarantee of any Nationalised Bank.

... ..."

(emphasis supplied)

From the above order, it is clear that the Court passed a conditional order, permitting the decree holder to withdraw the said amount by furnishing bank guarantee. Accordingly, conditional withdrawal was permitted in favour of the plaintiff-decree holder and the plaintiff withdrew the said amount on 7.2.1979.

2. The decree of the trial court was challenged by way of appeal before this Court, being First Appeal No.498 of 1979. The aforesaid First Appeal was disposed of by this Court on 12.6.1991. This Court partly allowed the First Appeal. For the reasons stated in the said judgment, this Court modified the trial court's decree by reducing therefrom the principal sum of Rs.26,965/- and a further sum of Rs.2,360/- by way of interest thereon, i.e. totally deducting Rs.28,925/-. This Court, in substitution of the decree of the trial court, directed

the defendant to pay a sum of Rs.4,44,663.15 Ps. to the plaintiff with running interest at the rate of 6% per annum on Rs.4,00,597.15 Ps. from the date of the suit till payment.

3. Pursuant to the judgment of this court, on 8.3.1994, the petitioner initiated execution proceedings by filing Darkhast Application No.14 of 1994, to recover Rs.3,30,001.85 Ps., being the amount of interest from the date of the suit till 4.1.1979.

The decree holder submitted that even though, pursuant to the order passed by the trial court on 31.1.1979, it withdrew the amount on 7.2.1979, since it was a conditional withdrawal, as pointed out by Mr.S.B. Vakil, learned Senior Counsel, the plaintiff was required to give bank guarantee at the time of withdrawal of the said amount, and as a result thereof, the decree holder prayed in the aforesaid Darkhast Application that it may be given interest from the date of the suit till the said withdrawal was made finally. According to the decree holder, he is entitled to get interest for the intervening period on the ground that the withdrawal was only a conditional one and the decree holder was required to give bank guarantee.

4. The executing court disposed of the said Darkhast by rejecting the claim of the decree holder for interest for the intervening period. The Executing Court came to the following conclusion : -

" ... ...

4. It appears from the rival contentions that defendant has already deposited the decretal amount on 4.1.1979 and plaintiff has withdrawn that amount on 7.2.1979. So, the plaintiff is not entitled to get interest as decretal amount is already withdrawn by plaintiff and decree is fully satisfied. Learned advocate Mr.Santakumar Kaji, has cited above case law but in that case law, it was held that plaintiff is entitled to get amount or deposit as deposited amount was not withdrawn in that case. While in the present case, the deposited amount was already withdrawn, so that decretal amount is already realised and in this circumstances, the above case law are not helpful to the facts of the present case. Hence, for the reason stated above, I pass the following order.

O R D E R

Present Darkhast is stand disposed off as decree is fully satisfied with no order as to costs.

... ..."

5. On behalf of the petitioner, Mr.S.B. Vakil, learned Senior Counsel, has strongly relied upon the decision of the Apex Court in P.S.L. Ramanathan Chettiar and others v. O.R.M. P.R.M. Ramanathan Chettiar, AIR 1968 SC 1047. Relying upon the said judgment, it is argued by Mr.Vakil that this cannot be said to be a 'deposit' under Order XXI Rule 1 of the Code of Civil Procedure, as it was a conditional deposit and the decree holder was not given absolute liberty to withdraw the said amount. Mr.Vakil has submitted that the decree holder was required to spend large amount towards giving bank guarantee and, all throughout, till the proceedings were pending before the High Court, the petitioner was required to maintain the said balance in the bank since bank guarantee was given. He, therefore, submitted that the demand of the decree holder for interest is absolutely justified and the same is in accordance with law. In the aforesaid decision, on which reliance is placed by Mr.S.B. Vakil, the Apex Court has observed as under in paragraphs 12, 13 and 14 :-

" ... ...

12. On principle, it appears to us that the facts of a judgment-debtor's depositing a sum in court to purchase peace by way of stay of execution of the decree on terms that the decree holder can draw it out on furnishing security, does not pass title to the money to the decree-holder. He can if he likes take the money out in terms of the order, but so long as he does not do it, there is nothing to prevent the judgment-debtor from taking it out by furnishing other security, say, of immovable property, if the court allows him to do so and on his losing the appeal putting the decretal amount in court in terms of Order 21 Rule 1 C.P.C. in satisfaction of the decree.

(13) The real effect of deposit of money in court as was done in this case is to put the money beyond the reach of the parties pending the disposal of the appeal. The decree-holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment-debtor in case of his success in the appeal. Pending the determination of the same, it was beyond the reach of the judgment-debtor.

(14) The observations in Chowthmull's case, ILR 51 Cal.1010 = (AIR 1925 Cal 416) (supra) do not help the respondent. In that case, the appeal was not proceeded with by the Official Assignee. Consequently, the decree-holder could not be deprived of the money which had been put into court to obtain stay of execution of the decree as but for the order, the decree-holder could have levied execution and obtained satisfaction of the decree even before the disposal of the appeal.

... ..."

(Emphasis supplied)

The Apex Court, in the aforesaid decision, in terms, held that such deposit cannot be said to be a 'deposit' in terms of Order XXI Rule 1 of the Code of Civil Procedure and, as such, there is no question of stoppage of interest after the deposit.

6. Mr.Vakil has also relied upon the unreported judgment of this Court in State of Gujarat and Anr. v. (M/s.) Gangaji Ramji, 1996 (1) G.L.H. (U.J.) 22, wherein a learned single Judge has also come to the conclusion that mere deposit in Court would not amount to a payment made to the decree holder nor would it amount to payment towards satisfaction of the decree unless the prescribed procedure under Order XXI Rule 1 has been followed. The Court, therefore, found that such deposit cannot be said to be payment or deposit towards the satisfaction of the decree.

7. Mr.Vakil, therefore, submitted that such

conditional deposit can never be treated as a deposit, as contemplated under Order XXI Rule 1 of the Code of Civil Procedure and, therefore, the executing court should have allowed the application of the petitioner for interest for the period in question.

8. Mr.Bhatt, learned AGP, on the other hand, submitted that since stay was granted by the High Court under Order XLI Rule 5 of the Code of Civil Procedure, naturally, in view of such interim relief granted by the Court, the decree holder was permitted to withdraw the amount by furnishing security. He submitted that before the Supreme Court, there was no question of stay by appellate court, as contemplated by Order XLI Rule 5 of the Code of Civil Procedure. He submitted that when the Court itself granted conditional stay, the decree holder thereafter is not entitled to receive any amount even though the appeal is subsequently dismissed by the High Court. I do not find any substance in the said argument of the learned AGP, because the question which this Court is required to consider is whether the deposit made by the judgment debtor in the execution petition can ever be said to be 'deposit', as contemplated under Order XXI Rule 1 of the Code of Civil Procedure. The deposit, in the instant case, is a conditional deposit and on condition of giving bank guarantee, the decree holder was permitted to withdraw the amount. Ultimately, if the appeal of the judgment debtor was allowed by this Court, naturally, there was no question of complying with Order XXI Rule 1 of the Code of Civil Procedure. By virtue of the stay granted by Order XLI Rule 5 of CPC, the disputed amount was secured for the benefit of the judgment debtor, but once the judgment debtor lost in the said proceedings, naturally, they cannot take shelter of the High Court giving interim relief in the First Appeal.

9. Considering the aforesaid two judgments, i.e. of the Apex Court, as well as of this Court, in my view, the trial court has committed an error by not granting interest for the period in question. Under these circumstances, and considering the fact that the amount which is deposited by the judgment debtor cannot be said to be a 'deposit', as contemplated by Order XXI Rule 1 of the Code of Civil Procedure, since it was a conditional deposit, this Civil Revision Application is required to be allowed and it is accordingly allowed. Rule is made absolute, with no order as to costs. The order of the Executing Court in disposing of the Darkhast Application is quashed and set aside and the matter is sent back to the Executing Court for deciding the execution application in accordance with law and at the time of

disposing of the Darkhast, the trial court shall also consider this judgment and dispose of the Darkhast accordingly.

6th May, 2004 (P.B. Majmudar, J.)

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(apj)